

September 7, 2004

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
Room TW-A325
445 12th Street, SW
Washington D.C. 20556

**Re: CC Docket No. 96-128 - Public
Utilities Commission of Ohio**

Dear Secretary Dortch,

On August 6, 2004, the Federal Communications Commission (FCC) issued a Public Notice (notice) in CC Docket No. 96-128 (In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996) inviting comment on the Illinois Public Telecommunications Association's (IPTA's) petition for declaratory ruling concerning refunds of payphone line rates. Specifically, among other things, the IPTA requests that the FCC require refunds of charges payphone line charges rendered by SBC Illinois and Verizon to the extent these charges were inconsistent with the FCC's new services test (NST).

In response to the public notice, an email was filed by Howard Meister, on August 26, 2004, representing himself as the President of the Payphone Association of Ohio (PAO). The email supported the request for a declaratory ruling. The PAO also offered its impression of an ongoing proceeding at the Public Utilities Commission of Ohio (Ohio Commission), case number 96-1310-TP-COI. This email made a number of assertions about the process and characterizations about the case in Ohio.

On September 1, 2004, the Ohio Commission issued a Finding and Order (attached) requiring SBC to implement lower rates for payphone access lines consistent with the new blueprint provided to the states by the FCC in its *Wisconsin Order* and a new cost study filed by SBC. Due to the fact that the decision is still subject to rehearing, the Ohio Commission is limited in what it can comment about the issue and the proceeding.

The Ohio Commission is disturbed by PAO's attempt to plead issues considered in the case pending before the Ohio Commission in the context of a declaratory ruling request involving the facts of a case originating in Illinois. The facts of the Ohio proceeding are different than the Illinois proceeding, and some are still pending before the Ohio Commission. Making representations to the FCC and relying on them as fact,

prior to completion of the Ohio proceeding is improper until resolution of the case. The PAO should not attempt to circumvent the Ohio proceeding and insert its controversy into the Illinois Public Telecommunications Association's declaratory request.

A Commission review of the intrastate tariff provisions left to the states is problematic. The Commission left compliance with the November 8, 1996 *Payphone Reclassification Order* a matter of State review.¹ The Commission stated that it would rely on the states to ensure that the basic payphone line is tariffed by the LECs in accordance with the requirements of Section 276. Specifically, the order stated, "for purposes of meeting all of the requirements necessary to receive payphone compensation, the question of whether a LEC has effective intrastate tariffs in effect is to be considered on a state-by-state basis".²

The risk of a broad Commission ruling concerning state-by-state consideration of issues raises concerns. The Commission left it to the states to fully develop and apply the changes to the intrastate tariffs. Any after the fact review by the Commission on limited issues is unfair to the state process. The states developed individual records and reacted to the positions and evidence presented before each State Commission. Taking a narrow view of the refund issue absent the larger context of the state proceeding ignores the work done by the states to provide a balanced approach to the application of the tariffs. Also, the fact that each state has an independent process means that there is no single ruling the Commission can issue that would affect every state the same. Each state could be in a different point in the process, with different factual findings or application of the Commission's guidance. For example, the Ohio Commission is a proactive state being one of the first states to apply the "New Services Test" as highlighted by the *Wisconsin Order*. There is no telling where other states are in the process. Regardless, each state has an appropriate appellate process and the work done by the different states should be independently respected. Not to mention, any blanket Commission ruling on the issue could create serious conflicts between the state appellate courts and the Commission.

¹ Order on Reconsideration, ¶ 163, In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996. Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, FCC Docket Nos. 96-128, 91-35 and 96-439 (November 8, 1996).

² *Id.* at paragraph 12.

The Commission should ignore the attempt to intertwine the Ohio proceeding into this request for declaratory judgment. If the Commission sees value in addressing Ohio specific issues in the context of the Illinois conflict, the Ohio Commission would request the Commission as least issue a separate notice requesting comments on the idea. The Ohio Commission thanks the Commission for the opportunity to respond to the comments filed concerning the proceeding in Ohio.

Respectfully submitted,

On Behalf of
The Public Utilities Commission of Ohio

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